

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas
FILED

JUN 30 2005

Michael M. Milby, Clerk

MALLORY ALEXANDER INTERNATIONAL)
LOGISTICS,)

Plaintiff,)

v.)

PORTA TECHNOLOGIES INC.,)

Defendant.)

No.

L-05-CV-152

COMPLAINT

Plaintiff, MALLORY ALEXANDER INTERNATIONAL LOGISTICS ("MALLORY"), by its attorneys, FISHER KANARIS, P.C. for its claim for relief against Defendant, PORTA TECHNOLOGIES INC ("PORTA") alleges and states the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332 since the controversy involves a claim in excess of \$75,000.00 and there is complete diversity between the Plaintiff and Defendant in this matter.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a)(2) in that a substantial part of the events or omissions giving rise to this claim occurred within the Southern District of Texas and the claim arises out of the transportation and storage of products to and from a destination in the Southern District of Texas.

BREACH OF CONTRACT

3. MALLORY is a warehouse and transportation company, with a principal place of business in Memphis, Tennessee and operations throughout the United States, including a facility located at 12006 Sara Road, Laredo, Texas.

4. At all times relevant, MALLORY was a warehouseman as defined by the Texas Commercial Code.

5. PORTA is a buyer and seller of certain commodities, including cotton, and has a principal place of business at 172 Highland Square Drive, Suite 318, Hendersonville, North Carolina.

7. Since December 20, 2004, PORTA has contracted with MALLORY for the storage and distribution of its commodities. A copy of the Tariff between MALLORY and PORTA is attached as Exhibit A.

8. At all times relevant MALLORY performed all acts necessary and required activities in relation to the transportation and storage of PORTA's commodities.

9. Since December 20, 2004 up to the present, PORTA has breached its contract with MALLORY by failing to pay for the services provided by MALLORY.

10. As direct and proximate result of PORTA's breach, to date, MALLORY is owed \$96,038.38. A copy of the most recent accounts receivable is attached hereto as Exhibit B.

11. A portion of PORTA's commodities are currently being held by MALLORY, and continue to incur applicable charges and expenses.

WHEREFORE, Plaintiff, MALLORY ALEXANDER INTERNATIONAL LOGISTICS prays for judgment against Defendant, PORTA TECHNOLOGIES INC., as follows:

- a) An award of \$96,038.38;
- b) For reimbursement of all transportation, customs and insurance charges allocable to the subject goods;
- c) For prejudgment interest;
- d) For an order in favor of MALLOY allowing it to sell PORTA's commodities currently held to satisfy this judgment;

- e) For costs and interest as allowable by law;
- f) For attorneys' fees and;
- g) For such further relief as this Court deems appropriate.

FISHER KANARIS, P.C.

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MALLORY ALEXANDER INTERNATIONAL LOGISTICS